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EXAMINER

MISLEH, JUSTIN P

ART UNIT	PAPER NUMBER
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2622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/600,199

Applicant(s)

SADOVSKY ET AL.

Examiner

Justin P. Misleh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/9/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9 January 2007 have been fully considered but they are not persuasive.
2. Applicant argues, "Parulski does not teach or suggest the ... language of independent claim 1 ... Parulski does not teach or suggest 'wherein the analyzing and the adjusting are performed automatically at the target computer, and wherein *the analyzing and the adjusting are initiated by the transferring of the digital image file from the digital image data source device to the target computer,*' as recited in independent claim 1 ... *Parulski does not teach or suggest automatic analysis and adjustment at a target computer that is initiated by transferring a digital image file from a digital image data source device to the target computer*" (emphasis added by Applicant).
3. The Examiner respectfully disagrees with Applicant's position. In figure 31b and column 26 (line 63) – column 27 (line 15), Parulski et al. disclose analyzing and adjusting (step 214) are performed at the target computer (80), wherein the analyzing and adjusting (step 214) are initiated by the transferring of the digital image file (steps 202 and 208) from the digital image data source device (18) to the target computer (80). Furthermore, Parulski et al. also state, in column 17 (lines 7 – 46), that the derived images (step 208) are analyzed for "common photographer errors and oversights" and some functions may be "automatic functions". Parulski et al. at least provide either automatic recapture with automatically adjusted settings as shown in figure 47 or automatic image processing as stated in column 41 (line 29) – column 43 (line 22).

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Therefore, contrary to Applicant's position, Parulski et al. indeed disclose automatic analysis and adjustment at a target computer that is initiated by transferring a digital image file from a digital image data source device to the target computer.

4. Applicant additionally argues, "Parulski also does not teach or suggest elements of amended independent claims 25, 28, 36, 51 and 52."

5. Again, the Examiner respectfully disagrees with Applicant's position. As stated in the Non-Final Office Action (mailed August 11, 2006) and as repeated below, "The Examiner considers Claims 1, 3, 7 – 10, 12, 13, 15, 20 – 22 and Claims 36, 37, and 41 – 50 and Claim 51 and Claim 52 to be corresponding claims, respectively ... Accordingly, where deemed appropriate, they will be rejected with together." Therefore, the Examiner's above-response to arguments for amended Claim 1 are equally responsive to amended independent claims 25, 28, 36, 51 and 52.

6. Applicant finally argues, "The Action rejects claims 4-6, 18 and 38-40 under 35 U.S.C. 103(a) as being unpatentable over Parulski in view of the Examiner's official notice. [See Action at p. 11.] Applicants respectfully traverse these rejections."

7. The Examiner respectfully disagrees with Applicant's position. Applicant's traverse of the use of Official Notice is improper. According to MPEP §2144.03, "**to adequately traverse** such a finding, **an applicant must specifically point out the supposed errors** in the examiner's action, which would include **stating why the noticed fact is not considered to be common knowledge or well-known in the art**" (emphasis added). Applicant's traverse amounts to a mere allegation of patentability over the common knowledge/well-known in the art. The MPEP states, "A general allegation that the claims define a patentable invention ... would be

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inadequate” (see MPEP§2144.03). Thus, it is clear Applicant's traverse is inadequate - the Examiner is not required to provide documentary evidence to maintain the rejection.

Specification

8. The abstract of the disclosure is objected to because it contains “comprises” on line 6. The Examiner considers “comprises” to be legal phraseology often used in patent claims and should be avoided. Correction is required. See MPEP § 608.01(b).

Drawings

9. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference characters not mentioned in the description: 570 (figure 5) and 990 (figure 9).

10. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the Examiner does not accept the changes, the Applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. **Claims 1 – 3, 7 – 17, 19 – 37, and 41 – 55** are rejected under 35 U.S.C. 102(e) as being anticipated by Parulski et al. (US 6,930,718 B2).

The Examiner considers Claims 1, 3, 7 – 10, 12, 13, 15, 20 – 22 and Claims 36, 37, and 41 – 50 and Claim 51 and Claim 52 to be corresponding claims, respectively. Accordingly, where deemed appropriate, they will be rejected with together.

13. For **Claims 1, 28, 36, 51, and 52**, Parulski et al. disclose, as shown in figures 1, 3, 4, 25, 31a, 31b, 31c, 46, and 47, a method performed by a computer of processing digital images (see column 18, lines 50 – 57), the method comprising:

transferring a digital image file containing a digital image (see Steps 204 and 206 in figure 31b) from a digital image data source device (18 – figures 4 and 25) to a target computer (control system 80 – figures 4 and 25);

at the target computer (80), analyzing image data from the digital image file (see Steps 210 and 212 in figure 31b; also see column 17, lines 7 – 22, and column 18, lines 50 – 57); and

at the target computer (80), adjusting the image data (Parulski et al. indicates that the “derived ... images are enhanced” through processing; see column 12, lines 1 – 29) from the digital image file based at least in part on the analysis of the image data,

wherein the analyzing and the adjusting are performed automatically (Parulski et al. also state, in column 17, lines 7 – 46, that the derived images are analyzed for “common photographer errors and oversights” and some functions may be “automatic functions”. Parulski et al. at least provide either automatic recapture with automatically adjusted settings as shown in figure 47 or automatic image processing as stated in column 41, line 29 – column 43, line 22.) at the target computer (80), and wherein the analyzing and the adjusting are initiated by transferring the digital image file from the digital image data source device to the target computer (see figure 31b and column 26, line 63 – column 27, line 15).

The claims comprehensively recite a method, a computer system, and a software system for acquiring, transferring, automatically analyzing, and automatically adjusting digital images. In figures 1 and 4, Parulski et al. disclose a digital camera for performing the recited method. In column 17 (lines 7 – 22) and column 18 (lines 50 – 57), Parulski et al. state that the method may implemented in software stored in the camera and executed by the CPU (81) within the camera. Furthermore, Parulski et al. indicate that the method by also be executed according to firmware are stored with the camera. Finally, Parulski et al. also disclose the use of “fuzzy logic algorithms”. Based upon these teachings, the Examiner believes Parulski et al. adequately disclose the claimed steps, components, customization, and modules required by the claim language.

14. As for **Claim 2**, Parulski et al. disclose, as shown in figure 1, that the digital image data source device is at least a digital camera (10) or mass-storage device (memory 54).

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15. As for **Claims 3 and 37**, Parulski et al. disclose, as stated in column 17 (lines 7 – 22) and column 18 (lines 50 – 57), wherein the transferring is initiated at a source location for the digital image (e.g., shutter release 22).

16. As for **Claims 7 and 41**, Parulski et al. disclose, as stated in column 26 (lines 7 – 24), further comprising analyzing non-image information from the digital image file (“shutter speed” is non-image information); wherein the adjusting is based at least in part on the analysis of the non-image information (Parulski et al. state the analysis includes “shutter speed”).

17. As for **Claims 8 and 42**, Parulski et al. disclose, as stated in column 26 (lines 7 – 24), wherein the non-image information comprises at least shutter speed and aperture setting.

18. As for **Claims 9 and 43**, Parulski et al. disclose, as shown in figures 41 and 42 and as stated in column 35 (line 62) – column 36 (line 45), wherein the image data comprises pixel data for the image.

19. As for **Claims 10 and 44**, Parulski et al. disclose, as stated in column 17 (lines 7 – 22), further comprising generating image characteristic data (e.g., “exposure information” including “camera orientation” and “color information”) prior to adjusting the image data; wherein the adjusting is based at least in part on the image characteristic data.

20. As for **Claim 11**, Parulski et al. disclose, as stated in column 17 (lines 7 – 22), wherein the image characteristic data comprises image orientation data (Parulski et al. explicitly recite this feature in the above citation), and wherein the adjusting comprises adjusting orientation of the image based on the image orientation data (also see figure 49).

21. As for **Claims 12 and 45**, Parulski et al. disclose, as stated in column 17 (lines 7 – 22), wherein the image characteristic data comprises one image orientation data, blur data, and color

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balance data, and exposure data (Parulski et al. explicitly recite these feature in the above citation; also see figures 45 and 49).

22. As for **Claims 13 and 46**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), further comprising: generating metadata corresponding to the adjusting (“metadata instructions”); and storing the metadata corresponding to the adjusting in the digital image file; wherein the storing facilitates preservation-of an original version of the digital image (“The edited image that replaces the original electronic image can include sufficient information to recreate the original electronic image, in the form of metadata instructions or the like.”).

23. As for **Claim 14**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), wherein the transferring is performed in response to a request from a user-mode application (see Step 186 in figure 31a; “S1 CLOSED?”), and further comprising: providing the digital image file with the metadata to the user-mode application (“The edited image that replaces the original electronic image can include sufficient information to recreate the original electronic image, in the form of metadata instructions or the like.”).

24. As for **Claims 15 and 47**, Parulski et al. disclose, as shown in figures 31c and 47, wherein automatic performance of the analyzing and the adjusting is selectively enabled or disabled by a user (figure 31c is manual performance and figure 47 is automatic performance).

25. As for **Claim 16**, Parulski et al. disclose, as stated in column 12 (lines 12 – 14), wherein the digital image file is a compressed digital image file.

26. As for **Claim 17**, Parulski et al. disclose, as stated in column 12 (lines 12 – 14), wherein the digital image file is in a JPEG format.

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27. As for **Claim 19**, Parulski et al. disclose, as shown in figures 31a – 31c and 47, further comprising repeating the acts of claim 1 for a plurality of digital images (also see column 37, lines 15 – 23).

28. As for **Claims 20 and 48**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), wherein the acts are performed in an operating system environment as a feature (“revision suggestions” are one of many features) of the operating system environment (The Examiner considers the “software stored” upon which the controller 81 operates with to be the claimed “operating system environment”).

29. As for **Claims 21 and 49**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), wherein the operating system environment is a managed code environment (The Examiner considers the “firmware” to be a “managed code environment”).

30. As for **Claims 22 and 50**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), wherein the acts are performed in a background service of an operating system environment (The Examiner considers capturing images as the primary function of the camera 10; accordingly the “revisions suggestions” is a “background service”).

31. As for **Claim 23**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), storing the a computer-readable medium (memory 54) having stored thereon a digital image processed according the method of claim 1.

32. For **Claim 24**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), a computer-readable medium (ROM or EEPROM) having stored thereon computer-executable instructions for causing a computer to perform the method of claim 1.

33. For **Claim 25**, Parulski et al. disclose, as shown in figures 1, 3, 4, 25, 31a, 31b, 31c, 46, and 47, a method performed by a computer of processing digital images (see column 18, lines 50 – 57), the method comprising:

upon transfer of a digital image file containing a digital image (see Steps 204 and 206 in figure 31b) from a digital image data source device (18 – figures 3 and 25) to a target computer (80- figure 4 and 25);

responsive to the transfer of the digital image file (see figure 31b and column 26, line 63 – column 27, line 15), analyzing image data from the digital image file at the target to computer (see Steps 210 and 212 in figure 31b; also see column 17, lines 7 – 22, and column 18, lines 50 – 57); and

prior to receiving any user input relating the analyzing, adjusting the image data at the target computer based at least in part on the analysis of the image data (Parulski et al. indicates that the “derived ... images are enhanced” through processing; see column 12, lines 1 – 29. Parulski et al. also state, in column 17, lines 7 – 46, that the derived images are analyzed for “common photographer errors and oversights” and some functions may be “automatic functions”. Parulski et al. at least provide either automatic recapture with automatically adjusted settings as shown in figure 47 or automatic image processing as stated in column 41, line 29 – column 43, line 22.);

and generating metadata corresponding to the adjusting (Parulski et al. disclose, as stated in column 42, line 57 – column 43, line 2, wherein the image adjustment software module generates metadata corresponding to adjustments of the digital image data, and further

comprising: a metadata/image integrator for integrating the metadata into a digital image file containing adjusted digital image data.)

34. As for **Claim 26**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), storing the metadata corresponding to the adjusting in the digital image file; wherein the storing facilitates reversal of the adjusting.

35. As for **Claim 27**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), storing the metadata corresponding to the adjusting in a second image file; wherein the second image file comprises a second version of the digital image file.

36. As for **Claim 29**, Parulski et al. disclose, as shown in figures 1 and 4, further comprising an image output device (26) for visually displaying digital images.

37. As for **Claim 30**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), wherein the image analysis software module and the image adjustment software module are in an image acquisition service of an operating system (The Examiner considers the “software stored” upon which the controller 81 operates with to be the claimed “operating system environment”).

38. As for **Claim 31**, Parulski et al. disclose, as stated in column 12 (lines 12 – 14), further comprising: an image decoder for decoding compressed digital image data; and an image encoder for encoding adjusted digital image data.

39. As for **Claim 32**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), wherein the image adjustment software module comprises one or more processing filters for adjusting the one or more digital images.

40. As for **Claims 33 and 53**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), wherein the image adjustment software module comprises an extensible software architecture operable to allow customization of the image adjustment software module, wherein the extensible software architecture comprises one or more processing filters for adjusting the one or more acquired digital images, wherein each of the one or more processing filters encapsulates an image adjustment function (also see column 42, line 57 – column 43, line 2).

41. As for **Claims 34 and 54**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), wherein the customization comprises adding, removing or reordering processing filters in the image adjustment software module.

42. As for **Claim 35**, Parulski et al. disclose, as stated in column 42 (line 57) – column 43 (line 2), wherein the image adjustment software module generates metadata corresponding to adjustments of the one or more acquired digital images, and further comprising: a metadata/image integrator for integrating the metadata into a digital image file containing adjusted digital image data.

43. For **Claim 55**, Parulski et al. disclose, as stated in column 11 (lines 12 – 25) and in column 18 (lines 50 – 57), a computer-readable medium (ROM or EEPROM) having computer-executable code for the software system of claim 52.

Claim Rejections - 35 USC § 103

44. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

45. **Claims 4 – 6, 18, and 38 – 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Parulski et al. (US 6,930,718 B2).

The Examiner considers Claims 4 – 6 and Claims 38 – 40 to be corresponding claims, respectively. Accordingly, where appropriate, they will be rejected with together.

46. As for **Claims 4 – 6 and 38 – 40**, Parulski et al. disclose, as shown in figure 1, acquiring the digital image with a shutter release (22) on the digital camera 10). Although, Parulski et al. do not specify where the transferring is initiated remotely at a target location; via a wireless communication medium; and through a network connection.

However, **Official Notice** (MPEP § 2144.03) is taken that both the concepts and advantages of initiating acquiring of digital images at a remote location such as a target location; via a wireless communication medium; and through a network connection are well known and expected in the art. At the time the invention was made, it would have been obvious to one with ordinary skill in the art to have initiating acquiring of digital images at a remote location such as a target location; via a wireless communication medium; and through a network connection for the advantage of *providing a portable camera for use in surveillance systems*.

47. As for **Claim 18**, Parulski et al. disclose, as stated in column 12 (lines 12 – 14), wherein the digital image file is in a JPEG format. Parulski et al. additionally disclose, as stated in column 42 (line 57) – column 43 (line 2), generating metadata corresponding to the adjusting (“metadata instructions”) and storing the metadata corresponding to the adjusting in the digital image file. Although, Parulski et al. is silent with respect to EXIF format.

However, **Official Notice** (MPEP § 2144.03) is taken that both the concepts and advantages of storing digital images in the EXIF format are well known and expected in the art. At the time the invention was made, it would have been obvious to one with ordinary skill in the art to have stored digital images in the EXIF format for the advantage of *providing a platform independent manageable digital image file*.

Conclusion

48. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

49. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Justin P Misleh whose telephone number is 571.272.7313. The Examiner can normally be reached on Monday through Friday from 8:00 AM to 5:00 PM.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Vivek Srivastava can be reached on 571.272.7304. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JPM

March 30, 2007


TUAN HO
PRIMARY EXAMINER